

EXHIBIT A

THOMPSON LAW OFFICE, LLC

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Middle Road Gualo Rai, Salpan, MP 96950
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FACSIMILE COVER SHEET

DATE: MAY 27, 2008

TO: ROBERT O'CONNOR
ATTORNEY AT LAW

FAX No. 234-5683

RODNEY JACOB
ATTORNEY AT LAW

FAX No. 233-2776

FROM: ALETH KAE ATALIG
FOR COLIN THOMPSON, ESQ

RE: UMDA ET. AL. VS. ROBERT PFAFF ET. AL.

NUMBER OF PAGES: (INCLUDING THIS PAGE) 2

COMMENTS:

Please see attached letter dated May 27, 2008.

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May 27, 2008

Via Facsimile Only

Robert O'Connor, Esq.
O'Connor Berman Dotts & Banes
2nd Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950

Rodney Jacob
Calvo & Clark, LLP
1st Floor, Macaranas Building
PMB 951 Box 10001
Saipan, MP 96950

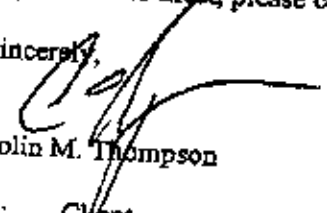
Re: UMDA, et. al. vs. Robert Pfaff, et. al.
Civil Action No. 07-0152

Dear Counsel,

In response to your service of the Rule 11 motion, we filed dismissals of the counterclaims and third party complaint today. I suggest we meet and confer to discuss lingering issues raised in your Rule 11 motion, if any.

If you wish to meet, please contact me to set a mutually convenient time.

Sincerely,


Colin M. Thompson

cc: Client

CMT/ML

Admitted to practice law in the State of California and
The Commonwealth of the Northern Mariana Islands

EXHIBIT B

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS
CASE NO.: 07-0152

UNITED MICRONESIA DEVELOPMENT
ASSOCIATION, and UMDA LAOLAO,
INC.,

Plaintiffs,

vs.

CERTIFIED COPY

ROBERT PFAFF, et al.,

Defendants.

VIDEOTAPED

DEPOSITION OF: Thomas C. Sorenson as 30(b)(6) of
KCT Irrevocable Trust

DATE TAKEN: May 16, 2008

TIME: 9:06 a.m. - 1:11 p.m.

PLACE: Hyatt Place
525 West Orange Street
Lakeland, Florida 33815

REPORTED BY: Lori Francis, RPR and
Notary Public

MERRILL LEGAL SOLUTIONS

135 Main Street, 4th Floor
San Francisco, CA 94105
www.merrillcorp.com/sax

415.357.4300 Tel

THOMAS C. SORENSON May 16, 2008

Page 45

1 for KCT?

2 A Yes.

3 Q Besides -- and -- was there any subsequent
4 contribution by the settler from --

5 A No.

6 Q -- the date you became a trustee until the
7 date you resigned as trustee?

8 A No.

9 Q Now, let's establish, when did you resign
10 as trustee for KCT, sir?

11 A On 12/27/07. That's the same date I
12 resigned from all of the trusts.

13 Q When you say "all of the trusts," besides
14 KCT, what trust -- what-all of the trusts are you
15 referring to, sir?

16 MR. PIERCE: Just GET. There's no
17 relevance to this matter of anything besides KCT
18 and GET and he testified about that yesterday.

19 MR. LUJAN: Well, you've made your
20 objection.

21 MR. PIERCE: No, I'm instructing him not
22 to testify about anything other than KCT and
23 GET.

24 THE WITNESS: KCT and GET.

25 BY MR. LUJAN:

Merrill Legal Solutions
(800) 869-9132

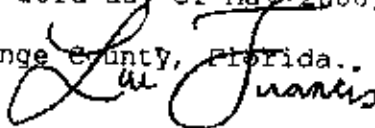
CERTIFICATE

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, Lori Francis, Registered Professional Reporter and notary public, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of Thomas C. Sorenson, as 3D(b)(6) of KCT Irrevocable Trust; that a review of the transcript was requested; and that the foregoing transcript, pages 1 through 157, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 23rd day of May-2008,
at Orlando, Orange County, Florida..



LORI FRANCIS, RPR, NOTARY
PUBLIC AND COURT REPORTER

Certificate of Oath

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, LORI FRANCIS, REGISTERED PROFESSIONAL
REPORTER, Notary Public, State of Florida, certify
that Thomas C. Sorenson as 30(b)(6) of KCT
Irrevocable Trust personally appeared before me on
the 16th of May, 2008 and was duly sworn.

WITNESS my hand and official seal this 23rd
day of May, 2008.

Lori Francis



Lori Francis, RPR
Notary Public - State of Florida
My Commission Expires: March 17, 2011

EXHIBIT C

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

UNITED MICRONESIA DEVELOPMENT
ASSOCIATION, INC. and UMDA LAOLAO
LLC,

CIVIL ACTION NO. 07-0151

Plaintiffs,

ROBERT PFAFF, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Juan T. Linares, Associate Judge
February 19, 2008

APPEARANCES:

For the plaintiffs:

Robert O'Connor, Esq.
Timothy A. Bellas, Esq.
Rodney Jacob, Esq.
Alex Freeman, Esq.

For Robert Pfaff, et al:

Colin Thompson, Esq.
Robert T. Torres, Esq.
Stephen Mutting, Esq.
Viviana R. Ryan, Esq.
Loren Sutton, Esq.
John Pierce, Esq.

For Paul Dingee:

For Pothschild Trust, et al:

For David Amir Makini:

For G.E.T. Realty Trust, et al:

Transcribed by:

Celina A. Concepcion
dba Judicial Services
Atuhong Place, Chalan Piao
P.O. Box 500461-08
Saipan, MP 96950
(670) 235-7825

1 trustee and as an individual and, as the individual, nothing
2 there.

3 Ah, as we've argued before and -- and you'll hear on
4 rebuttal, on reply, the trusts are not proper parties. If
5 there's any claim to go forward, it's against Sorenson the
6 trustee.

7 THE COURT: Okay.

8 MR. TORRES: Your Honor, did you wanna take a break?

9 THE COURT: Ah, you wanna take a break?

10 MR. TORRES: Um, I'm ready, but you sound like you wanted
11 to.

12 THE COURT: Um, not -- not really.

13 MR. TORRES: Okay. Good.

14 THE COURT: Yeah.

15 MR. TORRES: You asked, so I wanted to check.

16 THE COURT: Okay.

17 MR. TORRES: Your Honor, um Mr. Dingee, I wanna ask
18 something here it's like, you know unlike the preliminary
19 injunction and the summary judgment, really, I mean in a
20 12(b)(6), aren't we limited at analyzing the motion to the
21 face of the well-pled complaint? Because, if we are, then why
22 are we hearing in the argument about the letter to the Bank of
23 Hawaii as the -- as the context for the unlawful attempt
24 because if that's what, the answer to the what, they got to
25 have said that in their complaint and that's really my problem

1 Saipan, Commonwealth of the)

2 Northern Mariana Islands) CERTIFICATION

3 I, Celina A. Concepcion, dba Judicial Services, hereby
4 certify:

5 That I did the actual transcription work for the above
6 proceedings in the case of *MDA, et al., v. Robert Pfaff, et*
7 *al.* In performing this function, I took possession of the
8 duplicate cassette tapes provided by the Law Offices of Calvo
9 & Clark LLP and converted the audio contents thereon to the
10 above written form to the best of my ability without any
11 alteration, revision or editing. If there are any places in
12 the above transcript which are noted as "indiscernible", "(?)"
13 or "(ph.)", I was unable to accurately determine that portion
14 of the taped proceedings.

15 I further state that I have no personal interest in the
16 above proceedings. I have not been paid any bonus or gratuity
17 for my work by anyone and have charged only what would be my
18 normal charges.

19 I hereby declare under penalty of perjury that the above
20 is true and correct. Executed at Saipan, Northern Mariana
21 Islands, this 6th day of March, 2008.

22
23 Celina A. Concepcion
24
25

EXHIBIT D

**STATE OF WYOMING * SECRETARY OF STATE
MAX MAXFIELD
BUSINESS DIVISION**

200 West 24th Street, Cheyenne, WY 82002-0200

Phone 307-777-7311 · Fax 307-777-5339

Website: <http://soswy.state.wy.us> · Email: corporations@state.wy.us

Filing Information

Name **Laramie Fealty, LLC**
Filing Type **Limited Liability Company**
Status **Active**

General Information

Fictitious Name		ID	2007-000546283
Old Name		Standing	Good
Sub Type	Flexible Limited Liability Company	SubStatus	Current
Formation Locale	Wyoming	Name Consent	N
Filing Date	11/21/2007 9:30 AM	Term of Duration	Perpetual
Delayed Effective Date		Expiration Date	
Inactive Date			

Registered Agent Address

AAA Corporate Services, Inc.
1620 Central Ave Ste 202
Cheyenne, WY 82001 USA

Mailing Address

1620 Central Ave Ste 202
Cheyenne, WY 82001 USA

Parties

Type	Name / Organization / Address
Manager	Joseph A. Zebrowski, Jr.
Organizer	April Lymer

Public Notes

Filing Information

Name **Laramie Fealty, LLC**
Filing Type Limited Liability Company
Status Active

Amendment History

Num	Type	Date	Delayed Date	Status	Username
2008-000659305	RA Name/Address Change	02/21/2008		Active	CSTRAW

EXHIBIT E



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Thompson Law Office, LLC.
J.E. Tenorio Building
PMB 917 Box 10001
Saipan, Mariana Islands 96950
Telephone: (670) 233-0777
Facsimile: (670) 233-0776
Bar No.: F0221

Attorney for Defendant GET Realty Trust

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**UNITED MICRONESIA DEVELOPMENT,
INC. and UMDA LAOLAO LLC**

Plaintiffs,

v.

ROBERT PFAFF, et al.

Defendants.

CIVIL ACTION NO. 07-1052

**DEFENDANT GET REALTY TRUST'S
RESPONSE TO PLAINTIFFS' JOINT
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Pursuant to Rules 16(b), 26(f), and 34(b) of the Commonwealth Rules of Civil Procedure, Defendant GET REALTY TRUST ("GET") hereby makes this written response to the Plaintiffs' First Request for the Production of Documents ("Plaintiffs' Request")

GENERAL OBJECTIONS

1. GET objects to Plaintiffs' Request as premature, in that (a) the case is not at issue and many parties have not yet appeared, (b) there are pending motions to dismiss which may dramatically alter the parties' discovery obligations, (c) the Court's stay of discovery has not been lifted and (d) GET will file a motion for a combined pretrial scheduling conference and discovery conference to address issues of a protective order re confidentiality and the schedule of discovery activities.

1 2. GET objects to the Plaintiffs' Request to the extent it purports to require GET to incur
2 the expense and burden of copying documents responsive to the Plaintiffs' Request and produce
3 them in the Commonwealth. To the extent GET agrees to produce documents responsive to any
4 category of Plaintiffs' Request, it will do so as specified by the Commonwealth Rules of Civil
5 Procedure – i.e. it will make them available for inspection and copying at the place where they are
6 kept.

7 3. GET objects to the production of any responsive documents containing personal or
8 confidential information until entry of a suitable protective order re confidentiality.

9 4. GET objects to any request that calls for him to produce any information not within
10 its possession, custody, or control.

11 5. GET objects to the production of any responsive document protected by the attorney-
12 client privilege, the common-interest privilege, or the attorney work product privilege. When
13 completed, GET's counsel will produce an appropriate privilege log with respect to such
14 communications and work product prior to May 1, 2007.

15 6. GET incorporates the foregoing general objections into each of the following written
16 responses.

17 Without waiving the foregoing objections as to each of the document requests made in the
18 Request and without waiving any right to a stay of discovery, GET responds as set forth below.

19
20 **SPECIFIC OBJECTIONS AND RESPONSES**

21 **Response to Request No. 1:**

22 Upon entry of suitable scheduling and protective orders GET will produce documents
23 sufficient to show establishment, ownership, structure, and control of GET Realty Trust, including
24 the identity of its settlers, contributors, trustees, and beneficiaries.
25

1 Response to Request No. 2:

2 GET states that upon entry of suitable scheduling and protective orders he will produce
3 documents sufficient to show establishment, ownership, structure, and control of GET Realty Trust,
4 including the identity of its settlers, contributors, trustees, and beneficiaries.

5 Response to Request No. 3:

6 GET objects on the grounds of burdensomeness and that the information is not reasonably
7 calculated to lead to the discovery of admissible evidence.

8 Response to Request No. 4:

9 GET states that upon entry of suitable scheduling and protective orders it will produce
10 documents related to transfers of funds between GET, Robert Pfaff, John Larson. GET objects to
11 the term "entities related to Pfaff or Larson" as vague.

12 Response to Request No. 5:

13 GET will produce the non-privileged requested documents upon entry of suitable scheduling
14 and protective orders.

15 Response to Request No. 6:

16 GET objects on the grounds of burdensomeness and that the information is not reasonably
17 calculated to lead to the discovery of admissible evidence.

18 Response to Request No. 7:

19 GET objects on the grounds of burdensomeness and that the information is not reasonably
20 calculated to lead to the discovery of admissible evidence.

21 Response to Request No. 8:

22 Upon entry of suitable scheduling and protective orders GET will produce non-privileged
23 documents.
24
25

1 Response to Request No. 9:

2 Upon entry of suitable scheduling and protective orders GET will produce non-privileged
3 documents constituting the requested communications.

4 Response to Request No. 10:

5 Upon entry of suitable scheduling and protective orders GET will produce non-privileged
6 documents constituting the requested communications.

7 Response to Request No. 11:

8 Upon entry of suitable scheduling and protective orders GET will produce non-privileged
9 documents constituting the requested communications.

10 Response to Request No. 12:

11 GET objects on the grounds of burdensomeness and that the information is not reasonably
12 calculated to lead to the discovery of admissible evidence.

13 Response to Request No. 13:

14 GET objects on the grounds of burdensomeness, privilege and that the information is not
15 reasonably calculated to lead to the discovery of admissible evidence

16 Response to Request No. 14:

17 GET objects to the definition of Pfaff-Related Individuals and Pfaff-Related Entities, but will
18 produce the non-privileged requested documents upon entry of suitable scheduling and protective
19 orders.

20 Response to Request No. 15:

21 GET objects to the definition of Pfaff-Related Individuals and Pfaff-Related Entities, but will
22 produce the non-privileged requested documents upon entry of suitable scheduling and protective
23 orders.

Response to Request No. 16:

GET objects to the definition of Pfaff-Related Individuals and Pfaff-Related Entities, but will produce the non-privileged requested documents constituting the requested communications upon entry of suitable scheduling and protective orders.

Response to Request No. 17:

GET objects on the grounds of burdensomeness, privilege and that the information is not reasonably calculated to lead to the discovery of admissible evidence.

Response to Request No. 18:

GET objects on the grounds of burdensomeness, privilege and that the information is not reasonably calculated to lead to the discovery of admissible evidence.

Response to Request No. 19:

GET objects to the definition of Pfaff-Related Entities, but will produce the non-privileged requested documents upon entry of suitable scheduling and protective orders.

Response to Request No. 20:

GET objects on the grounds of burdensomeness, privilege and that the information is not reasonably calculated to lead to the discovery of admissible evidence.

Response to Request No. 21:

GET objects on the grounds of burdensomeness, privilege and that the information is not reasonably calculated to lead to the discovery of admissible evidence.

Response to Request No. 22:

Upon entry of suitable scheduling and protective orders GET will produce non-privileged documents.

Response to Request No. 23:

GET objects on the grounds of privilege and that the information is not reasonably calculated to lead to the discovery of admissible evidence.

Dated this 19th day of November, 2007.

/s/
COLIN M. THOMPSON, ESQ. FO221
Attorney for GET REALTY TRUST

EXHIBIT F

LexisNexis File & Serve Transaction Receipt

Transaction ID: 19877818
Submitted by: Marie Pereda, Calvo & Clark LLP
Authorized by: Daniel M Benjamin, Calvo & Clark LLP
Authorize and file on: May 19 2008 8:42PM GST

Court: MP CNMI Superior Court
Division/Courtroom: N/A
Case Class: Civil
Case Type: Damages
Case Number: 07-0152-CV
Case Name: United Micronesia Development Association Inc vs G E T Realty Trust

Transaction Option: Serve Only - Public
Billing Reference: 139-0007

Documents List
5 Document(s)

Attached Document, 18 Pages Document ID: 24021763

Document Type: Motion	Access: Public	Statutory Fee: \$0.00	Linked: PDF Format Original Format
Document title: Notice of Motion and Motion for Sanctions Against John Pierce and Colin Thompson Pursuant to Com. R. Civ. Proc. 11; Memorandum of Points and Authorities in Support of Thereof			

Attached Document, 4 Pages Document ID: 24021764

Related Document ID: 24021763		PDF Format Original Format
Document Type: Affidavit	Access: Public	Statutory Fee: \$0.00

Document title:
Affidavit of Rodney J. Jacob In Support of Motion for Sanctions Against John Pierce and Colin Thompson Pursuant to COM. R. CIV. P. 11

Attached Document, 65 Pages Document ID: 24021765

Related Document ID: 24021764		PDF Format Original Format
Document Type: Exhibit	Access: Public	Statutory Fee: \$0.00

Document title:
Exhibit 1 - 4 to the Affidavit of Rodney J. Jacob In Support of Motion for Sanctions Against John Pierce and Colin Thompson Pursuant to COM. R. CIV. P. 11

Attached Document, 55 Pages Document ID: 24021766

Related Document ID: 24021764		PDF Format Original Format
Document Type: Exhibit	Access: Public	Statutory Fee: \$0.00

Document title:
Exhibits 5 - 13 to the Affidavit of Rodney J. Jacob In Support of Motion for Sanctions Against John Pierce and Colin Thompson Pursuant to COM. R. CIV. P. 11

Attached Document, 44 Pages Document ID: 24021767

Related Document ID: 24021764		PDF Format Original Format
Document Type: Exhibit	Access: Public	Statutory Fee: \$0.00

Document title:
Exhibit 14 to the Affidavit of Rodney J. Jacob In Support of Motion for Sanctions Against John Pierce and Colin Thompson Pursuant to COM. R. CIV. P. 11

[Expand All](#)

☐ **Sending Parties (2)**

Party	Party	Attorney	Firm	Attorney Type
--------------	--------------	-----------------	-------------	----------------------

United Micronesia Development Association Inc	Type Plaintiff	Benjamin, Daniel M	Calvo & Clark LLP	Attorney for Plaintiff
United Micronesia Development Association Inc	Plaintiff	Jacob, Rodney J	Calvo & Clark LLP	Attorney for Plaintiff

☐ Recipients (10)☐ Service List (10)

Delivery Option	Party	Party Type	Attorney	Firm	Method
Service	Arnett, Joseph	Defendant	David William Dooley	Dooley Roberts & Fowler LLP	E-Service
Service	Bellas, Timothy H	Plaintiff	Timothy H Bellas	Bellas, Timothy H LLC	E-Service
Service	Calvo, Eduardo A	3rd Party Defendant	Edward Camacho Arriola	Arriola, Edward C	E-Service
Service	CONCORDE TRUST	Defendant	Stephen J Nutting	Nutting, Stephen J-Saipan	E-Service
Service	Davina Ltd	Defendant	Stephen J Nutting	Nutting, Stephen J-Saipan	E-Service
Service	Deloitte & Touche LLP	Defendant	Thomas E Clifford	Clifford, Thomas E-Saipan	E-Service
Service	Deloitte & Touche LLP	Defendant	David William Dooley	Dooley Roberts & Fowler LLP	E-Service
Service	Dingee, Paul	Defendant	Robert Tenorio Torres	Torres, Robert T-Saipan	E-Service
Service	GET REALTY TRUST	Defendant	Colin Murphy Thompson	Thompson, Colin M	E-Service
Service	Irizarry & McCall PC	Defendant	Richard W Pierce	Pierce, Richard W-Saipan	E-Service
Service	IRIZARRY & MCCALL PC PROFIT SHARING PLAN	Defendant	Robert Tenorio Torres	Torres, Robert T-Saipan	E-Service
Service	IRIZARRY MCCALL & SQUARELL PC	Defendant	Richard W Pierce	Pierce, Richard W-Saipan	E-Service
Service	Johnson, Michael S	Defendant	David William Dooley	Dooley Roberts & Fowler LLP	E-Service
Service	KEYSDALE VENTURES LLP	Defendant	Robert Tenorio Torres	Torres, Robert T-Saipan	E-Service
Service	Lifoloi, Jose	3rd Party Defendant	Edward Camacho Arriola	Arriola, Edward C	E-Service
Service	LLC, Laramie Fealty	3rd Party Plaintiff	Colin Murphy Thompson	Thompson, Colin M	E-Service
Service	Makov, David Amir	Defendant	Loren Allison Sutton	Sutton, Loren A-Saipan	E-Service
Service	MCCALL, RAYMOND D	Defendant	Richard W Pierce	Pierce, Richard W-Saipan	E-Service
Service	MONTE PERUCHO INVESTIDURAS LLC	Defendant	Robert Tenorio Torres	Torres, Robert T-Saipan	E-Service
Service	PFAFF, ROBERT	Defendant	Colin Murphy Thompson	Thompson, Colin M	E-Service
Service	PIROUETTE LLC	Defendant	Robert Tenorio Torres	Torres, Robert T-Saipan	E-Service
Service	Rothschild Trust Guemsey Ltd	Defendant	Stephen J Nutting	Nutting, Stephen J-Saipan	E-Service
Service	Rothschild Trust Guemsey Ltd Account 2299	Defendant	Stephen J Nutting	Nutting, Stephen J-Saipan	E-Service
Service	Sasquatch II	Defendant	Colin Murphy Thompson	Thompson, Colin M	E-Service
Service	Snow, Russell	3rd Party Defendant	Edward Camacho Arriola	Arriola, Edward C	E-Service
Service	Sorensen, Thomas C	Defendant	Colin Murphy	Thompson, Colin M	E-

Service	Thompson, Colin M	Defendant	Thompson Colin Murphy Thompson	Thompson, Colin M	Service E- Service
Service	Trust, KCT Irrevocable	Defendant	Colin Murphy Thompson	Thompson, Colin M	E- Service
Service	UMDA LAOLAO LLC	Plaintiff	Michael W Dotts	O'Connor Berman Dotts & Banes-Salpan	E- Service
Service	UMDA LAOLAO LLC	Plaintiff	Timothy H Bellas	Bellas, Timothy H LLC	E- Service
Service	United Micronesia Development Association Inc	Plaintiff	Michael W Dotts	O'Connor Berman Dotts & Banes-Salpan	E- Service

☐ Additional Recipients (0)

☐ Case Parties

Close



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EXHIBIT G

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Attorneys For Plaintiff United Micronesia Development Association, Inc.

RODNEY J. JACOB, ESQ., F0186

Calvo & Clark, LLP

1st Floor, Macaranas Building

PMB 951 Box 10001

Saipan, MP 96950

Telephone No. (670) 233-2045

Facsimile No. (670) 233-2776

Attorneys For Plaintiff United Micronesia Development Association, Inc.

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**UNITED MICRONESIA
DEVELOPMENT ASSOCIATION, INC.,
and UMDA LAOLAO LLC,**

Plaintiffs,

vs.

ROBERT PFAFF, et al.

Defendants.

CIVIL CASE NO. 07-0152

**NOTICE OF MOTION AND
MOTION FOR SANCTIONS
AGAINST JOHN PIERCE AND
COLIN THOMPSON PURSUANT
TO COM. R. CIV. PROC. 11;
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF THEREOF**

Date:

Time:

Courtroom:

NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD, please take notice that on _____, 2008 at ____ a.m./p.m., or as soon thereafter as this matter can be heard, Plaintiff United Micronesia Development Association, Inc. ("UMDA") will, and hereby does, respectfully move this Court to impose sanctions pursuant to Commonwealth Rule of Civil Procedure 11 against GET Realty Trust's attorneys John Pierce and Colin Thompson. This motion is based upon this notice of motion and motion, Commonwealth Rule of Civil Procedure 11, the Affidavit of Rodney J. Jacob submitted herewith, the accompanying memorandum of points and authorities, all pleadings and records on file in this matter, and any argument that may be heard hereon.

Respectfully submitted this 19th day of May, 2008.

**O'Connor Berman Dotts & Banes
Calvo & Clark, LLP**
Counsel for Plaintiff *United Micronesia
Development Association, Inc.*

By: _____ /s/
RODNEY J. JACOB (F0186)

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

On April 8, 2008, attorneys John Pierce and Colin Thompson signed and filed "Counterclaims" against Plaintiff United Micronesia Development Association, Inc. ("UMDA") on behalf of an entity styling itself "Laramie Fealty LLC." This entity is not a party to this suit. It neither sought nor obtained permission to appear in this action by way of intervention, substitution, or joinder. It is black-letter law that a counterclaim can only be filed by a party to the litigation, which Laramie Fealty is not. Nonetheless, Messers, Pierce and Thompson filed these counterclaims, announcing that Laramie Fealty was the trustee of GET Realty Trust.

The "Counterclaims" are not only contrary to black letter law, they also are rife with false allegations that Laramie's counsel knew were false when they filed the claims. Many of the allegations in the "Counterclaims" have already been demonstrated – or found by this Court – to be false in regard to the Court's November 13, 2007 Order.

Finally, the "Counterclaims" were filed for an improper purpose – to obstruct the litigation and to prevent settlements by GET's former co-conspirators. By asserting the "Counterclaims" and thus falsely laying claim to monies on which it has no rightful claim, Laramie hopes to prevent other defendants from using the funds frozen by the Court's November 13, 2007 Order as part of a settlement of the claims against them (as two sets of Defendants already have chosen to do). This would permit Laramie (and its true master, Robert Pfaff) to indefinitely delay this litigation and to hold all other Defendants hostage to their positions.

In sum, by signing and filing the "Counterclaims," Messrs. Pierce and Thompson have violated Commonwealth Rule of Civil Procedure 11. As required by the "safe harbor" provision of Rule 11, on May 19, 2008, UMDA provided them with a copy of this motion and memorandum of law, thereby giving them an opportunity to withdraw the Counterclaims and

thus rectify their violation of Rule 11. The Court now is receiving this brief because they refused. Therefore, pursuant to Rule 11, UMDA now moves the Court to impose sanctions upon Messrs. Pierce and Thompson for their violations of Rule 11(b).

II. BACKGROUND

A. Only Sorenson (in His Trustee Capacity) Is a Party to This Case

When Plaintiffs filed this action, they expressly named as defendants GET Realty Trust and its Trustee, Thomas Sorenson, in his capacity as trustee. In response, Defendants acknowledged that Sorenson, Defendant Robert Pfaff's brother-in-law, was the trustee of GET. (*See, e.g.*, Sorenson August 6, 2007 Affidavit at ¶ 1 (stating he is trustee of GET).)

Notably, Defendants continued to make these representations to this Court in 2008 while GET Realty Trust and Sorenson (in his individual capacity) had motions to dismiss pending. For example, on February 19, 2008, Mr. Pierce appeared before this Court and expressly reaffirmed that Sorenson was GET's trustee in his argument seeking to obtain dismissal of Sorenson in his individual capacity, stating: "If there's any claim to go forward, it's against Sorenson the trustee." (*See* Aff. of Rodney J. Jacob ("Jacob Aff.") Ex. 10 at 154:3-6). On March 10, Messrs. Pierce and Thompson even filed an Executive Summary again identifying their client as "Thomas Sorenson Trustee" – the opening paragraph of which announces, "COMES NOW, Defendant Thomas Sorenson the Trustee." (March 10, 2008 "Executive Summary of Tom Sorenson the Trustee's Motions to Dismiss.")¹

¹ On March 25, 2008 – approximately a week after a federal grand jury issued a criminal indictment against Defendant Robert Pfaff – Colin Thompson filed a Stipulated Request to Continue Hearing on Motion to Reconsider and for the first time identified himself as the attorney for Defendants GET Realty Trust and an unnamed "Trustee."

B. Only After the Dismissal of GET, and Sorenson (as an Individual) Did Defendants Disclose the Alleged Transfer To Laramie

Subsequently, relying on these representations that Sorenson was trustee of GET, the Court entered its April 4, 2008 Order dismissing GET on the ground that trusts are not subject to suit, and dismissing Sorenson in his individual capacity. But, the Court did *not* dismiss Sorenson as trustee, and it held that the claims against GET could continue to be maintained against GET's Trustee.² (April 4 Order Following February 19, 2008 Hearing at 3-4.)

Unbeknownst to the Court and UMDA, however, at the end of December 2007, Sorenson had been purportedly replaced as trustee of GET (and of defendant KCT Irrevocable Trust). (Aff. of Rodney J. Jacob ("Jacob Aff.") Ex. 1 at 40:24-41:11, filed concurrently herewith.) This was highly relevant information that defense counsel not only failed to bring to the Court's attention despite their duty of candor, but which they affirmatively misrepresented at the hearing on the motion to dismiss. (See Jacob Aff. Ex. 10 at 154:3-6).³

Instead, it was not until four days after the Court's April 4, 2008 Order that an entity called "Laramie Fealty LLC" revealed itself for the first time. Laramie claimed (without any further explanation) to be the "trustee of GET," it filed a set of "Counterclaims" (as well as a "third-party complaint") on April 8, 2008.

It was not until the depositions of Sorenson that part of the story about Laramie Fealty's unauthorized intervention began to emerge (depositions that Pierce, Thompson and Sorenson tried on at least three separate occasions to prevent, resulting in the April 4, April 18, and May 7

² Plaintiffs have moved for reconsideration of the April 4, 2008 Order, in part based upon Defendants' lack of candor in obtaining the dismissal of Sorenson as an individual and GET, even as they secretly removed Sorenson as a trustee.

³ Indeed, Sorenson later testified that his attorneys were working on the transfer in November (Jacob Aff. Ex. 7 at 30:6-23) – the very time at which his attorneys also were seeking to delay Sorenson's deposition testimony and arguing that this would not prejudice Plaintiffs.

Orders all requiring Sorenson's attendance). Under questioning, Sorenson admitted that he had (purportedly) resigned as trustee from both GET and KCT on December 27, 2007. (Jacob Aff. Ex. 1 at 40:24-41:11).⁴ Although Sorenson refused to give much additional information, Plaintiffs have learned through their own research that Laramie Fealty was formed on November 21, 2007, just a few days after the Court ruled against Defendants on Plaintiffs' motion for a Preliminary Injunction, and just two days after GET filed objections to Plaintiffs' discovery responses. (Jacob Aff. Ex. 3).

The timing suggests that the reason for Laramie Fealty's secret formation was to get discoverable information out of Sorenson's hands and hide it elsewhere – and then hide Sorenson so GET and KCT would never have to reveal what happened.⁵ Indeed, Sorenson has admitted that once he was “replaced” as trustee, Defendants moved documents and bank accounts out of his possession (even though the documents were subject to pending document requests). (Jacob Aff. Ex. 2).

C. Pierce Is Not Even Admitted To Represent “Laramie Fealty”

Not only did Laramie Fealty never request leave to appear in this action, its counsel Mr. Pierce, who is admitted only *pro hac vice*, has never sought leave to represent his purported new client. The Supreme Court admitted Mr. Pierce *pro hac vice* “to practice in the Commonwealth . . . for the sole purpose of representing GET Realty Trust, Thomas C. Sorenson as Trustee of GET Realty Trust, Thomas C. Sorenson in his individual capacity and K.C.T. Irrevocable Trust.”

⁴ During his April 16, 2008 deposition, Sorenson could not remember the exact date when he purportedly resigned as trustee; he said it was sometime in November or December 2007. (Jacob Aff. Ex. 2 at 39:19-40:18). Just last week, however, Mr. Sorenson recalled the December 27, 2008 date. (*Id.* Ex. 1 at 40:24-25).

⁵ Along with repeatedly hiding their witness, Defendants also still are yet to complete their document production, having strung out their “confidentiality” objections since at least February as an excuse to refuse production.

(See Jacob Aff. Ex. 13 (emphasis added).) At no time has Mr. Pierce ever been authorized to represent anyone else in this action. Nonetheless, he has appeared on numerous pleadings on behalf of Laramie Fealty. Moreover, on occasion he has also appeared for an unnamed person or entity whom he and Mr. Thompson are cryptically calling "Defendant, Trustee for GET Realty Trust." (See, e.g., Counterclaims, Motion to Strike and for Accounting, First Discovery Request.) Whether this is merely a coy reference to Laramie Fealty, or whether Messrs. Pierce and Thompson have yet another secret trustee up their sleeves, is unclear – but either way, Mr. Pierce has never sought leave to represent this mystery "Defendant" *pro hac*.⁶ His *pro hac* is to represent Sorenson as trustee, who also not coincidentally is an actual party to this case.

D. Defendants Failed to Withdraw the Pleading within the Safe Harbor Period

On May 19, 2008, UMDA served Messrs. Pierce and Thompson with this motion for sanctions. As required under Rule 11, nine days have passed. The sanctionable conduct has not been corrected: Messrs. Pierce and Thompson have not withdrawn the improper "Counterclaims." Therefore, pursuant to Rule 11, UMDA now moves the Court to sanction Messrs. Pierce and Thompson for their violations of Rule 11(b). It respectfully requests that the Court award it reasonable expenses and attorneys' fee incurred in bringing this motion and opposing the improper counterclaims.

III. ARGUMENT

Commonwealth Rule of Civil Procedure 11 provides that when an attorney presents a pleading or other paper to the Court – "whether by signing, filing, submitting, or later

⁶ The failure by Mr. Pierce, and by his co-counsel Mr. Thompson, to seek leave of the Supreme Court for Mr. Pierce to represent Laramie Fealty *pro hac*, is particularly surprising given the Supreme Court's prior warning to Thompson against allowing someone "through [his] office, [to] practice law without having been admitted *pro hac*." (Jacob Aff. Ex. 4 at 16-17 (December 4, 2007 Transcript of Supreme Court hearing.)

advocating” – that attorney is “certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” that:

- (1) [the pleading or paper] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal, defense, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, medication, or reversal of existing law . . .
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. . . .

Com. R. Civ. P. 11(b); *Matsunaga v. Matsunaga*, 2006 MP 25 ¶41; see also *Tenorio v. Superior Court*, 1 N.M.I. 112, 121-22 (1990).⁷ Rule 11, of course, is designed to deter and to curb meritless, abusive filings. See *Matsunaga, supra*, 2006 MP 25 ¶42, (“The purpose of Rule 11 is to deter baseless filings and curb abuses.”).

Thus, Rule 11 requires signing attorneys: (1) to conduct a reasonable inquiry to determine that a pleading is well grounded in fact; (2) to conduct a reasonable inquiry to determine that the positions taken in a pleading are warranted by existing law or a good faith argument for the extension or modification of existing law; and (3) not to file a pleading for any improper purpose. See, e.g., *Driskell v. General Motors Corp.*, 2006 WL 901179, 3 (E.D. Mich. 2006).⁸ Courts determine whether signing attorneys have fulfilled their duty under Rule 11 by “an ‘objective reasonableness’ standard” under all the circumstances, “including the time available for filing and the complexity of information presented.” *Matsunaga*, 2006 MP 25 ¶42.

⁷ *Tenorio* examined Rule of Appellate Procedure 38(b). The Supreme Court has found that Rule 38(b) and Commonwealth Rule of Civil Procedure 11 are “almost identical”; and, therefore, relied on *Tenorio* as guidance in Rule 11 cases. *Lucky Development Co., Ltd. V. Tokai, U.S.A., Inc.*, 3 N.M.I. 79, 89-90 (1992).

⁸ Interpretations of counterpart federal rules are persuasive authority when interpreting Commonwealth procedural rules. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283 n. 14 (1991).

Here, Messrs. Pierce and Thompson have violated every aspect of Rule 11. Their Counterclaims are not well grounded in law, because they improperly assert claims on behalf of a stranger to the litigation. Nor are the Counterclaims well grounded in fact, because they make allegations belied by the established record. Moreover, the Counterclaims were submitted for an improper purpose. Sanctions are therefore appropriate on three independent grounds.

A. The "Counterclaims" Are Not Well Grounded in Law

Sanctions may be imposed under Rule 11 if "a document is not well grounded in law." *See Tenorio*, 1 N.M.I. at 123. Laramie Fealty's counterclaims are not well grounded in law, because Laramie Fealty, as a stranger to the litigation, has no right to file counterclaims.

Commonwealth Rule of Civil Procedure 13 requires that a counterclaim be stated in a "pleading" by a "pleader." Rule 13(a), (b) and (d).⁹ By definition, only a party to the litigation can file a counterclaim, because only a party can be a "pleader." *See, e.g.*, 3A Moore's Federal Practice, ¶ 13.02 (a counterclaim is "any claim ... which one *party* has against an opposing party") (emphasis added); *Premier Foods of Bruton, Inc. v. City of Orlando*, 192 F.R.D. 310, 312 (M.D. Fla. 2000) (non-party cannot file cross-claims; only parties can file cross-claims). As one Court has explained, it is "self-evident that in order to have a counterclaim there must first be a claim against the party asserting the counterclaim." *Kearney v. A'Hearn*, 210 F. Supp. 10, 20 (D.C.N.Y.), *aff'd per curiam* 309 F.2d 487 (2d Cir. 1962).

Laramie Fealty is not a party to the litigation; there are presently no claims stated against it.¹⁰ Although Laramie Fealty alleges in its counterclaim that it "is the trustee of GET Trust"

⁹ Messrs. Pierce's and Thompson's filing of the "Counterclaims" also violates this Rule: the "Counterclaims" were not filed in a pleading, as required by Rule 13.

¹⁰ That does not mean that it is not bound by the result of this action or that it has no liability; as the alleged successor-in-interest to Sorenson, Laramie Fealty will be bound by this Court's rulings even though it is not a party. *See* Com. R. Civ. Proc. 25(c).

(Counterclaims, ¶8), Laramie Fealty does not explain how it can be the trustee when, until now, Messrs. Pierce and Thompson have held Sorenson out as the trustee.

Assuming, however, that Laramie Fealty somehow succeeded to or became a transferee of Mr. Sorenson, that does not make Laramie Fealty a party. A transferee or successor in interest becomes a party *if and only if* it complies with Commonwealth Rule of Civil Procedure 25(c) and obtains an order of this Court. Under Rule 25(c), the purported successor in interest must file a motion requesting the Court to direct or permit its substitution or joinder. The Court may grant or deny that motion, in its discretion. Unless and until such a motion is granted, the successor has no right to participate as a party. *See* Com. R. Civ. P. 25(c) ("In case of any transfer of interest, the action may be continued by or against the original party, *unless* the court upon motion directs the person who whom the interest is transferred to be substituted in the action or joined with the original party.") (emphasis added); *see also Patsy's Italian Restaurant, Inc. v. Banas*, 2008 WL 495568 (E.D.N.Y. Feb. 20, 2008) (denying motion brought under Federal Rule of Civil Procedure 25(c) to join party to whom interest was transferred after suit was brought when to do so would not facilitate, expedite or simplify the action).

Messrs. Pierce and Thompson have failed and refused to file a motion to either substitute Laramie Fealty for Sorenson or to join it as a party, even after Plaintiffs brought Rule 25(c) to their attention. (*See, e.g.,* April 28, 2008 Motion to Reconsider April 4, 2008 Order Dismissing Thomas C. Sorenson (in his Individual Capacity), GET Realty Trust and K.C.T. Irrevocable Trust at 7). They also have refused to withdraw the "Counterclaims" they filed on behalf of Laramie Fealty. Instead, they have contumaciously stuck to their position that by merely saying Laramie is a party, they can somehow make it so. They cite no authority for their position, nor have they proffered any argument for the extension, modification or reversal of existing law. In

short, their conduct in filing the purported counterclaim is objectively unreasonable, and hence deserving of sanctions. *See Tenorio*, 1 N.M.I. at 129 (concluding petition was sanctionable because it was not warranted by existing law and petitions did not argue for the extension, modification or reversal of existing law).

B. The “Counterclaims” Are Not Well Grounded in Fact

Sanctions may be imposed under Rule 11 if “a document is not well grounded in fact.” *See Tenorio*, 1 N.M.I. at 122. “[A] document is not well grounded in fact if an attorney has misrepresented the evidence.” *Id.* at 125 (issuing sanctions because counsel, who filed factual misleading petition, was “overzealous in his advocacy, and crossed the line of permissible pleading”).

The “Counterclaims” allege that UMDA “fraudulently concealed” the negotiations with Kumho Holdings that ultimately resulted in the sale of the Golf Course, that “UMDA decided to simply embezzle outright what it could not take through deception,” and that UMDA’s “misappropriation” of GET’s “property is motivated by nothing more than avarice”; the Counterclaims further accuse UMDA of “blatant theft of [GET’s] property.” (Laramie Fealty LLC’s Counterclaims, ¶¶ 20, 22, 28, 29.) All these allegations are misrepresentations of facts that have already been established in this action – and that Messrs. Pierce and Thompson knew were established before they signed and submitted the Counterclaims.

For instance, the Counterclaims allege that UMDA “fraudulently concealed” the negotiations to sell the development company that owned the Golf Course to the Kumho Holdings Korean group. (Counterclaims, ¶13.) That allegation is belied by evidence taken by this Court at the hearings conducted on October 31, November 1 and 2, 2007 on Plaintiffs’ motion for a preliminary injunction and Defendant Paul Dingee’s motion for partial summary judgment. (Jacob Aff. Ex. 6 at 245:14-246:18; 249:12-18; 261:11-21; 262:5-263:9.) At those

hearings, there was proffered a December 3, 2006 letter from attorney Russel Murray written on behalf of KCT Trust (of which Mr. Sorenson was trustee) as well as other UMDA shareholders and LaoLao Members.¹¹ In that letter, Mr. Murray requested an update on the status of negotiations with the Korean group that had expressed interest in purchasing the Saipan Lau Lau Golf Course. (Jacob Aff. Ex. 5 and Ex. 6 at 262:5-9; *see also* Nov. 13, 2008 Order Granting Preliminary Injunction at 10.) That letter thus shows that Mr. Murray – and through him, Mr. Sorenson and GET – knew full well of any “negotiations” with the Korean group – which means no “fraudulent concealment” possibly occurred.

Indeed, the fact of the matter is that these Pfaff defendants (who were working hand-in-hand with UMDA’s compromised management) had more information than UMDA’s directors who are now accused of this “fraudulent misrepresentation.” Specifically, the minutes of UMDA’s October 20, 2006 meeting (the meeting at which it is resolved to send the share repurchase letter) shows that the Board at that time did not intend to sell, but instead that the plan was to build a new UMDA corporate center at LaoLao that included a golf academy facility banquet center and an office for UMDA’s headquarters. (Jacob Aff. Ex. 11 at 4). Indeed, the undisputed evidence on the preliminary injunction hearing – which Defendants had an opportunity to challenge – was that:

[The first] mention of KUMHO’s interest in attempting to buy SLDI outright [was] in or about late November 2006. At the time, Mr. Grandinetti indicated that he did not take it very seriously but felt we had a duty to respond. Thus, near the end of November and in early December, 2006, on Mr. Grandinetti’s instructions, SLDI provided certain confidential information to KUMHO. It was my understanding at that time from Mr. Grandinetti that no sale was expected, but that UMDA was ensuring it responded to the expression of interest.

¹¹ Mr. Murray was counsel for GET (as well as KCT). According to Mr. Sorenson’s testimony last week, GET’s name was inadvertently left out of the first paragraph of the December 3 letter. (Jacob Aff. Ex. 7 at 85:20-87:8.)

(Jacob Aff. Ex. 12 at ¶ 6).

Thus, the evidence before the Court shows that Murray knew about the negotiations for the sale of the Golf Course before many of UMDA's own board members. (Jacob Aff. Ex. 6 at 263:5-9). Messrs. Pierce and Thompson, who attended those hearings, were aware of the Murray letter and the other evidence that GET's counsel Mr. Murray knew about the negotiations (*Id.* at 228:11-15; 229:5-8 and Ex. 7 at 85:25-89:5) – yet that did not deter them from signing and filing the Counterclaims, with their untrue allegations that the negotiations had been fraudulently concealed.

As another example, the Counterclaims allege that UMDA “embezzled,” “misappropriated” or committed “blatant theft” of GET's purported property. (Counterclaims, ¶¶ 16, 28, 29 and 55.) Messrs. Pierce and Thompson were fully aware – indeed, Pierce acknowledged at the preliminary injunction hearing – that Plaintiffs had “lodged” the disputed funds “with the Court.” (Jacob Aff. Ex. 6 at 194:20-195:14 and 315:7-8.). Yet, knowing that GET's purported money is under the Court's control, they still alleged in the “Counterclaims” that the money had been embezzled or removed by “blatant theft.” Those misrepresentations were objectively unreasonable – indeed, Messrs. Pierce and Thompson knew them to be false because the money was in the Court's accounts – and hence are equally deserving of sanctions.

Another misrepresentation is the allegation that UMDA “misappropriate[ed]” GET's property because it was “motivated by *nothing more* than avarice.” (Counterclaims at ¶ 28 (emphasis added).) This Court, though, has already found otherwise. In its November 13, 2007 Order Granting Preliminary Injunction and Denying Summary Judgment, the Court stated that, according to UMDA's president, UMDA and LaoLao did not pay out monetary distributions to those “they believed to be related to Pfaff because of concern about the Board's fiduciary duty to

UMDA shareholders in the event that Defendant-investors' contributions had been derived from UMDA misappropriations." (Nov. 13, 2007 Order at 11-12.) This Court found, moreover, that there is "evidence" that UMDA's concerns about such wrongdoing were legitimate ones. (See April 4, 2008 Order at 7 (stating that, "from the evidence that plaintiffs have provided to the Court it is clear that there is some wrongdoing that occurred")). Thus, the allegation in the Counterclaims that UMDA had no motive other than avarice is contradicted by evidence already in the record and accepted by this Court.

Because the foregoing misrepresentations were objectively unreasonable, Messrs. Pierce and Thompson have "crossed the line of permissible pleading" and should therefore be sanctioned. *See Tenorio*, 1 N.M.I. at 125.

C. The "Counterclaims" Were Filed for an Improper Purpose

Sanctions should be imposed under Rule 11 if "a document is interposed for an improper purpose." *See Tenorio*, 1 N.M.I. at 123. Even a document well grounded in fact and law can violate Rule 11 "if there is evidence of the signer's bad faith." *Id.* at 123-124.

The conduct of GET and its attorneys, Messrs. Pierce and Thompson, is the epitome of bad faith and abuse of process. Having deceived the Court for months about the identity of GET's trustee, they have now filed "Counterclaims" whose purpose is to prolong this litigation, to wrongfully lay claim to the disputed funds, to prevent other defendants from settling, and to disrupt these proceedings through harassment, intimidation and deceit.

Last year, defense counsel hatched the "assault on Saipan," whereby Pfaff, GET and their cohorts tried to evade the judicial process by attempting to spirit away the disputed funds before the Court or Plaintiffs could act. (See Jacob Aff. Ex. 14.) Only quick action by the Court prevented them from making a clean getaway. But where Pfaff and GET could not evade the judicial process, they were determined to abuse it. Thus, in the run-up to the "assault on

Saipan," they schemed to use the civil justice system to harass and intimidate UMDA board members into submission. (*See, e.g.*, Jacob Aff. Ex. Dec. 8, (emails noting that [UMDA Board Member Eduardo] "Calvo is in no position to be sued for fraud" given his political ties to the region)). And Pfaff himself devised a plan to seize the LaoLao funds by "oust[ing] the current Board" and suing board members. (*Id.* Ex. 9) Thus, the baseless "counterclaims" that Pierce and Thompson have filed are nothing more than the implementation of Pfaff's plan to seize the LaoLao funds—and to use the legal system to batter any person or entity that gets in his way.

Further, it is significant that there was no procedural requirement for Messrs. Pierce and Thompson to file any counterclaim at all on behalf of GET at present. Assuming a counterclaim of some sort on behalf of GET even became appropriate, it would properly be filed by Sorenson, because he is the one whom this Court's April 4, 2008 Order kept in this case as a defendant in his capacity as trustee of GET. But Mr. Sorenson was not under any deadline to file counterclaims. Under the Rules of Civil Procedure, counterclaims are to be filed with an answer to the complaint. Any answer here is not due until Plaintiffs file their Second Amended Complaint.

So why did Messrs. Pierce and Thompson rush to file Counterclaims that were not procedurally required and that were procedurally improper? The apparent reason was to enable GET to make the meritless argument that, through the Counterclaims, it lays claim to *all* the disputed funds, and therefore no other defendant can settle by releasing its alleged share of those funds to Plaintiffs. For instance, in the April 21, 2008 reply brief filed by "Defendant Trustee for the GET Realty Trust" in support of its motion for reconsideration of the Court's January 29, 2008 Order Releasing Funds, the (unidentified) "Trustee" argues that "Defendants lay claim" to the *all* the funds in the bank accounts under the Court's jurisdiction, even those funds

purportedly deriving from other investors' investment units. That argument, of course, is meritless, because Sorenson and GET previously acknowledged that GET was *not* claiming an interest in the funds purportedly belonging to the other Lao Lao investors. (See, e.g., Aug. 4, 2007 Sorenson Dec. (claiming an interest only in GET's shares and no other Members')).¹² Indeed, just last week at the Rule 36(b) deposition of Sorenson as representative for GET, when asked if GET had any sort of financial interest in the investment made by Paul Dingee, Mr. Sorenson responded, "No"; Sorenson testified that GET did not have a financial interest in any of the LLC Members (Jacob Aff. Ex. 7 at 82:7-83:5.) But it appears that the reason Messrs. Pierce and Thompson precipitously filed the groundless Counterclaims, on behalf of a non-party, was to enable them to then interfere with settlements by other UMDA LaoLao LLC investors of their purported interests in the LLC.

As this Court observed last month, "This case has dragged on far too long already." (April 4, 2008 Order at 10.) The effect of the improper Counterclaims filed by Messrs. Pierce and Thompson will be to ensure that the case continues to drag on, while they continue their efforts to stymie other defendants' settlements. Their bad faith and improper purpose are additional grounds for sanctions.

¹² As Plaintiffs explained in their May 2, 2008 Supplemental Opposition to GET Realty Trust's Motion to Reconsider the Court's Order of January 29, 2008 Releasing Funds and Response to Joinder, GET's own "counterclaim" states that it has an interest *in its own shares*: "As a result of the LLC's dissolution and/or distribution of LLC assets to certain Equity owners, GET Trust had an immediate possessory interest *in its own* pro rate share of such assets." (April 8, 2008 Counterclaim ¶ 46 (emphasis added).) Thus, even if Laramie Fealty's "counterclaims" were legitimate (which they are not), they could at most affect GET's purported interest in the fifteen LLC units allocated to it, and the funds therefrom – but not the completely separate and distinct shares supposedly belonging to the other Lao Lao investors.

D. Appropriate Sanctions Should Issue

Courts have broad discretion to fashion an appropriate sanction for violations of Rule 11; sanctions can be imposed on attorneys, clients, or both. See Rule 11(c); *Tenorio*, 1 N.M.I at 18; Wright and Miller, *Federal Practice and Procedure* § 1336.2. In general, sanctions should be imposed on the person(s) responsible for the violation. Wright and Miller, *Federal Practice and Procedure* § 1336; see *Tenorio*, 1 N.M.I at 18 ("Sanctions should be allocated among the persons responsible for the offending document based, on their relative culpability.") When an attorney is sanctioned for a Rule 11 violation, two purposes are served: deterrence and "punishment for dereliction of duty by an officer of the court who should know better." *Eastway Constr. Corp. v. City of New York*, 637 F. Supp. 558, 570 (D.C.N.Y. 1986).

Applying these rules, Messrs. Pierce and Thompson undoubtedly bear responsibility for the Rule 11 violations and should have known better. They had a duty under Rule 11 to make a reasonable inquiry to ensure that the "Counterclaims" were well-grounded in law and fact and not filed for an improper purpose. They did not. Nor did they withdraw the "counterclaims" after Plaintiffs had placed them on notice of their Rule 11 violations. Sanctions are therefore appropriate. See *Blair v. National Women's Center, Inc.*, 757 F.2d 1435 (4th Cir. 1985) (attorney's fees were properly assessed against attorney in view of bad faith exhibited in filing of complaint, dilatory tactics, frivolous legal positions, and scandalous accusations).¹³

¹³ This is not to say that GET or Laramie Fealty may not also prove to be responsible for the Rule 11 violations. Courts have held that "a party in whose name a paper is filed may be subject to Rule 11 sanctions if the party was aware at the time of the filing that the document was without a legal or factual basis or was filed for an improper purpose." See *Taitano v. South Seas Corp.*, Civil Action No. 92-1620 (CNMI Sup. Ct. 1992) at 7. If it becomes clear that GET or Laramie were indeed aware of the impropriety of the Counterclaims, Plaintiffs reserve the right to request leave to seek sanctions against them as well.

Accordingly, UMDA respectfully requests that the Court order Messrs. Pierce and Thompson to pay UMDA's attorneys fees in bringing this motion and in opposing the improperly filed "Counterclaims." *See Driskell* 2006 WL 901179 at *4 (noting that under the Federal Rules of Civil Procedure an award of attorneys' fees is "the sanction of choice").

III. CONCLUSION

For the foregoing reasons, UMDA respectfully requests that the Court grant their motion and impose sanctions against attorneys John Pierce and Colin Thompson for their conduct in signing and filing the "Counterclaims" by Laramie Fealty herein.

Respectfully submitted this 19th day of May, 2008.

O'Connor Berman Dotts & Banes
Calvo & Clark, LLP
Counsel for Plaintiff *United Micronesia*
Development Association, Inc.

By: /s/
 RODNEY J. JACOB (F0186)

EXHIBIT H

From: Collin Thompson [mailto:collin_thompson777@hotmail.com]
Sent: Wednesday, June 18, 2008 9:09 PM
To: Alex Freeman
Cc: Collin Thompson
Subject: Re: Laramie v. UMDA

Dear Alex,

I have never denied any attorney's request for a reasonable extension of time. While you were kind enough to recently give me an extra week to oppose a motion, your co-counsel, Rodney Jacob has not been as professional. He directed Ed Arriola to deny my request for an extension in the supreme court despite the fact that I am off island to argue before the Ninth Circuit.

Nonetheless, the lack of courtesy and professionalism exhibited by another attorney in your firm does not impact my responsibility to treat you with all professional courtesy due.

Still, your reason for the requested extension is not truthful. Bob O'Connor's absence from Saipan has in no way limited the ability of the Calvo and Clark firm to file numerous motions in court over the past few weeks. Are you saying that Bob O'Connor will be drafting the response?

Further, you have seen this complaint before and filed a motion to dismiss and briefed the issue extensively in your rule 11 motions directed to me. Why do you need 30 days now?

I do not want to grant a 30 day extension with out good cause showing. In the past, UMDA has sought extensions in bad faith. One glaring example is the requested extension to respond to Robert Pfaff's document request. I granted the extension just because it was requested only to find out that it was a tactical maneuver designed to gain advantage in the litigation. UMDA filed groundless objections and produced not a single document.

I do not want to be fooled again. If the other commitments include matters in the superior court case, I am willing to negotiate extensions of time there. If there is more to your request for your extension than you have revealed, please let me know.

Sincerely,
Colin

Thompson Law Office LLC
J.E. Tenorio Building
PMB 917 P.O. Box 10001

Saipan, Mariana Islands 96950
T 670 233 0777 | F 670 233 0776
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This electronic transmission contains information from the Law Offices of Colin M. Thompson which may be confidential and/or protected by the attorney-client privilege and/or the attorney work product doctrine. Please notify us immediately at the e-mail address or phone numbers provided above if you received this communication in error. Please then delete this communication. If you are not the intended recipient, please be aware that any disclosure, copying, distribution, or use of the content of this transmission, either in part or in whole, is prohibited. Thank you for your assistance.

— Original Message —

From: Alex Freeman
To: Colin Thompson
Cc: Colin Thompson
Sent: Thursday, June 19, 2008 1:04 PM
Subject: RE: Laramie v. UMDA

Hey Colin,

Among other reasons, UMDA needs a 30-day extension because its counsel, Bob O'Connor, is off-island until sometime in mid-July and UMDA's other counsel is saddled with pressing commitments over the next month.

Thanks,
Alex

From: Colin Thompson [mailto:colin_thompson777@hotmail.com]
Sent: Tuesday, June 17, 2008 7:03 PM
To: Alex Freeman
Cc: Colin Thompson
Subject: Re: Laramie v. UMDA

Dear Alex,

Please let me know why UMDA needs an extension of 30 days.

Best regards,
Colin

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----- Original Message -----

From: Alex Freeman

To: Colin Thompson

Sent: Wednesday, June 18, 2008 11:52 AM

Subject: Laramie v. UMDA

Colin,

UMDA's response to the complaint filed by Laramie Fealty in federal district court is currently due on July 2, but we are hoping that you will grant us a 30-day extension for our response, which would generate a deadline of August 1 for UMDA to respond to the complaint. Please let me know if this is agreeable.

Thank you,

Alex

EXHIBIT I

FILED
Clerk
District Court

APR 20 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ALAN STUART MARKOFF, D.D.S.,)
doing business as TOOTHWORKS)
and OPEN CHOICE,)

Plaintiff)

v.)

TODD KEITH JOHNSON, D.D.S.,)

Defendant)

Civil Action No. 05-0035

ORDER GRANTING
MOTION TO STAY

THIS MATTER came before the court on Thursday, April 13, 2006, for hearing of defendant's motion to stay this proceeding. Plaintiff appeared by and through his attorney, Mark K. Williams; defendant appeared by and through his attorney, David G. Banes.

THE COURT, having considered the written and oral arguments of counsel, rules as follows:

1 Defendant moves the court to abstain from hearing, and to stay, this
2 proceeding due to a parallel proceeding in Texas state court. For the following
3 reasons, the motion is granted.

4
5 Both parties rely on the principles enunciated in Colorado River Water
6 Conserv. Dist. v. United States, 424 U.S. 800, 96 S.Ct. 1236 (1976). There, the
7 United States Supreme Court recognized that abstention from the exercise of federal
8 jurisdiction is the exception, and not the rule, and set out guidelines for courts to
9 consider when confronted by abstention issues in the context of parallel state-
10 federal legal proceedings. The Court stated that a district court faced with a
11 situation of state court-district court concurrent jurisdiction could consider: (1) the
12 inconvenience of the federal forum, (2) the desirability of avoiding piecemeal
13 litigation, (3) the order in which jurisdiction was obtained, and (4) considerations of
14 wise judicial administration, giving due regard to conservation of judicial resources
15 and comprehensive disposition of litigation. Later, in Moses H. Cone Memorial
16 Hosp. v. Mercury Const., 460 U.S. 1, 103 S.Ct. 927 (1983), the Court reiterated that
17 "exceptional circumstances" should be present to justify a stay, and that the district
18 court should carefully balance the abovementioned factors in deciding whether to
19 stay or proceed. *Id.* at 460 U.S. 16.

20
21 However, in Colorado River both state law and federal water rights law were
22 implicated and the state and federal court had concurrent jurisdiction. In Moses H.
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1 Cone Memorial Hospital, there were parallel state arbitration and federal Arbitration
2 Act claims. Here, jurisdiction is founded solely on diversity of citizenship and no
3 other federal interests are implicated.
4

5 Having weighed the factors set out above, the court finds that abstention is
6 warranted and stays this proceeding. Although the two businesses at issue here are
7 located on Saipan, the appraisal, accounting, and legal work performed was for the
8 most part done in the mainland United States. Most of the negotiations between
9 the parties and/or their representatives were conducted on the mainland, primarily
10 in Texas. Significantly, the parties agreed in their contract of sale that any disputes
11 would be resolved using Texas state law. The Texas state court proceeding was filed
12 before the lawsuit in this court was filed.¹ Both parties have Texas counsel. In the
13 initial complaint, plaintiff stated he was a resident of Houston, Texas, and in the
14 first amended complaint states he is a domiciliary of the State of Texas. Most of the
15 potential witnesses are on the mainland, as are most of the records relating to the
16 sale of the dental practice. Travel and accommodation costs would be significantly
17 greater for parties and witnesses to travel to Saipan, rather than Texas.
18
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21

22 Given all these factors, the court concludes that the Northern Mariana
23

24
25 ¹ This court was unaware of the Texas state court proceeding until defendant
26 filed his motion for stay on March 17, 2006.

1 Islands is a more inconvenient forum to most of the participants in this litigation
2 than the Texas state court. Further, to proceed would certainly result in piecemeal
3 litigation. Given the lack of a strong federal stake in this litigation, the court
4 concludes that wise judicial administration counsels staying this matter in that there
5 is no reason to believe that the Texas court cannot render a full and fair decision on
6 all matters in dispute.
7

8
9 If the parties stipulate to waive the statute of limitations, it would be the
10 court's preference to dismiss this matter without prejudice.

11 IT IS SO ORDERED.

12 DATED this 20th day of April, 2006.
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17 
18 ALEX R. MUNSON
19 Judge
20
21
22
23
24
25
26

EXHIBIT J

Paul Dingee

From: <rdm@irizmcc.com>
To: <dingee@charter.net>
Sent: Tuesday, May 15, 2007 1:18 PM
Attach: First Amended Complaint.pdf
Subject: Fwd: Fwd: First Amended Complaint

too late. sorry. let's discuss. ray

----- Message Forwarded on May 15 -----
From: john larson <denver_4104@yahoo.com>
To: rdm@irizmcc.com
Subject: Fwd: First Amended Complaint
Date: Tue, 15 May 2007 09:07:40 -0700 (PDT)

Ray - FYI

--- DAVID.YORK@LW.com wrote:

> Subject: First Amended Complaint
> Date: Tue, 15 May 2007 07:30:55 -0400
> From: DAVID.YORK@LW.com
> To: colin.thompson@saipan.com,
> steven.bauer@lw.com,
> margaret.tough@lw.com,
> denver_4104@yahoo.com,
> bobkursk43@yahoo.com
>
>
> Greetings, All:
>
> Attached is UMDA's First Amended Complaint. They
> have added
> defendants, including local people from Deloitte.
> This, of course,
> destroys diversity jurisdiction; so we are stuck in
> the Commonwealth
> Superior Court.
>
> Colin -- meet Steve Bauer and Margaret Tough from
> Latham, and John
> Larson and Bob Pfaff of whom we spoke yesterday.
> All, meet Colin
> Thompson, our local counsel in Saipan.
>
> I will be speaking with Colin about this recent
> development this

7/1/2007

> evening (morning Saipan time).

>

> D.

>

> <<First Amended Complaint.pdf>>

>

> *****

>

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> Latham & Watkins LLP

>

You snooze, you lose. Get messages
ASAP with AutoCheck in the all-new Yahoo! Mail Beta.
http://advision.webevents.yahoo.com/mailbeta/newmail_html.html

[Attachment: First Amended Complaint.pdf]

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Login from home, work, school. Anywhere!

7/1/2007

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